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Results of the Copenhagen meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change; implications for indigenous peoples' local adaptation and mitigation measures

Summary

The present report was compiled by Special Rapporteurs Victoria Tauli-Corpuz and Lars-Anders Baer. It examines the outcomes of the Climate Change meetings that took place during 2009 and how these processes impact on indigenous peoples' local adaptation and mitigation measures.

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I. Introduction

1. At its seventh session in 2008, the United Nations Permanent Forum on Indigenous Issues appointed two of its members, Victoria Tauli-Corpuz and Lars-Anders Baer, as Special Rapporteurs to prepare a report on various models and best practices of the climate change mitigation and adaptation measures being undertaken by indigenous peoples in various parts of the world. The special rapporteurs, in collaboration with indigenous peoples, were requested also to prepare a draft declaration of action on climate change and indigenous peoples, which could include a road map for indigenous peoples towards the 2009 Conference of the Parties to the United Nations Framework Convention on Climate Change (the "Copenhagen Summit") and beyond. These materials were to be presented to the Permanent Forum at the eighth session in 2009.[1]

2. Subsequently, several reports and video productions on local adaptation and mitigation measures of indigenous peoples were completed by indigenous peoples and various non-governmental organizations (NGOs). Additionally, three regional summits on indigenous peoples and climate change were held in 2009, one each in Asia, Africa and Latin America, plus a global summit in Alaska, United States of America, in which Permanent Forum members participated. The Indigenous Peoples' Global Summit on Climate Change, held in Anchorage, Alaska, on 24 April 2009, adopted the Anchorage Declaration,[2] which contains the main demands that the indigenous peoples made on Member States and the United Nations Framework Convention on Climate Change, as well as a road map towards the Copenhagen Summit and beyond. The reports of these summit meetings were submitted to the Permanent Forum at its eighth session in 2009.

3. In the light of these activities, the special rapporteurs prepared the present report for submission to the Permanent Forum at its ninth session in order to assess the results of the Copenhagen Summit and its implications for indigenous peoples. It was felt that it would be useful to undertake an analysis of what occurred during the meetings of the United Nations Framework Convention on Climate Change and the fifteenth meeting of the Conference of Parties in Copenhagen during 2009 and consider the implications of this for indigenous peoples in terms of climate change adaptation and mitigation measures, building on the findings of two earlier reports.[3,4]

II. Indigenous peoples, climate change and the centrality of equity and justice

4. Indigenous peoples are estimated to number between 370 million and 500 million people; they account for 80 per cent of the world's cultural and biological diversity but occupy only about 20 per cent of the world's land surface.[5]

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[1] E/2008/43 and E/C.19/2008/13.

[2] E/C.19/2009/CRP.9.

[3] E/C.19/2008/10.

[4] E/C.19/2008/13.

[5] See University of Minnesota Human Rights Center, *Study Guide: The Rights of Indigenous Peoples*, which is available online at www1.umn.edu/humanrts/edumat/studyguides/indigenous.html.

The fact that indigenous peoples have survived climate changes which have taken place over thousands of years and that they continue to survive despite their high vulnerability is, in itself, a testament to their resilience and their tremendous capacity to adapt. However, that capacity is being challenged in the face of accelerating climate change and the grossly inequitous and unjust way such issues are addressed at the global and national levels.

5. The concentrations of carbon dioxide in the atmosphere globally ranged between 200 and 300 parts per million (ppm) for about 800,000 years, but the concentration of this gas has increased to 387 ppm in the past 150 years since the start of the Industrial Revolution.[6] Past emissions are already "locked in" and will cause adverse impacts for the next 30 to 40 years, notwithstanding any reduction in emissions in coming years. The Intergovernmental Panel on Climate Change (IPCC) noted that, even if global emissions were reduced to pre-2000 levels and atmospheric levels stopped rising, the current momentum of global warming would continue to affect the Earth's natural systems for hundreds of years.[7] With the continuing devastation that is occurring in indigenous peoples' territories, owing to increased or inadequate precipitation, stronger and longer-lasting hurricanes, cyclones and typhoons, long bouts of drought, the melting of glaciers and permafrost, increased flooding and rising sea levels, etc., the urgent need to enhance indigenous peoples' adaptive capacities and resilience and decrease their vulnerabilities cannot be overemphasized.

6. A direct relationship exists between increasing resilience and decreasing vulnerability of indigenous peoples in terms of their control over their lands, territories and resources, the strength of their social relationships and cultures and the vitality of their traditional knowledge systems, as well as their continuing practice of traditional livelihoods and natural resource management systems. Clearly, indigenous peoples' practical, respectful and spiritual connections to, and understanding of, their ancestral territories and ecosystems have ensured their resilience and continuing survival in the face of the adverse impacts of climate change and the efforts of colonialists to eliminate or assimilate them.

7. However, it is also this relationship with, and dependence upon, ecosystems that makes indigenous peoples highly vulnerable. The devastation wrought upon fragile ecosystems increases proportionally with increased emissions of greenhouse gases (GHG). Their vulnerabilities are further compounded by their disadvantaged socio-economic situations brought about by colonialism, continuing racism and discrimination and globalization processes which shape national economies into a "one-size-fits-all" unsustainable economic development paradigm.

8. Generally, climate change is treated as a scientific or environmental issue. However, the challenge is to go beyond that view in order to see the political, economic and social contexts and implications of this problem. The IPCC Fourth Assessment Report[7] concluded that GHG emissions are caused not just by natural factors but mainly by anthropogenic or human factors. Climate change negotiations

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[6] See World Bank, *World Development Report 2010: Development and Climate Change*, Washington, D.C., World Bank, 2009.

[7] See Intergovernmental Panel on Climate Change (IPCC), S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K. B. Averyt, M. Tignor and H. L. Miller, eds., *Climate Change 2007: The Physical Science Basis*. Contribution of Working Group I to the Fourth Assessment Report of IPCC, Cambridge, United Kingdom, and New York, Cambridge University Press, 2007.

have to deal with the political economy of burden-sharing with regard to emission reductions and the costs that will be incurred for implementing adaptation and mitigation measures. Since climate change is the result of the economic and political systems governing the world today, it stands to reason that these systems have to be altered not only to radically lower or halt GHG emissions but also to address the question of equity and justice. This implies that there should be radical transformations of national economies and growth strategies. The inequity between rich and poor countries and between poor and rich people within countries cuts across all the issues being negotiated within the United Nations Framework Convention on Climate Change[8] and the Kyoto Protocol to the Convention. The complexities of all these issues make climate change talks the most difficult of those under negotiation[9] globally, as had been witnessed at the Copenhagen Summit in December 2009.

9. The failure to reach agreement in Copenhagen is evidence that, unless equity and justice become the core principles underpinning the processes and substance of climate change negotiations, the solutions being proposed will not be enough to prevent impending climate-related catastrophes. Data show that Annex I parties to the Convention have fallen short in meeting their commitments, global temperatures are still rising and GHG emissions are still increasing. A climate-responsive and -sensitive sustainable development path, which is low-carbon or carbon neutral while allowing for pro-poor and ecologically and socially sustainable growth, cannot be achieved without putting equity and justice at the core.

10. Since 1950, three fourths of the total GHG emissions found in the atmosphere are the direct result of industrial development and modern lifestyles in Annex I parties; yet those countries account for only 21 per cent of the world's population.[10] Such high levels of GHG emissions are causing the climate variability the world is going through and the adverse impacts of that variability. For countries and people who have not caused climate change but are bearing the heaviest brunt of its impacts, adaptation and enhancing resilience are higher priorities than mitigation. Rich countries have an obligation to provide the finances and technologies needed by the most vulnerable countries and people, which includes indigenous peoples, to adapt. Annex I parties have to adhere strictly to their legal obligations to cut back emissions on the domestic front, instead of relying on carbon credits which they can buy from developing countries.

11. The foregoing description elaborates on what is meant by the terms "climate equity" and "climate justice". Those responsible for polluting the atmosphere should bear the burden for mitigating the effects of the damages caused by their actions, compensate the victims who are suffering from the damage their actions caused and furnish the support necessary to enable those most adversely affected and vulnerable to adapt to the situation. It is highly unjust and immoral to ask the most vulnerable and the poorest countries and people to bear the burden of mitigating a problem that they did not create. A key principle enshrined in the Convention and the Kyoto Protocol to the Convention, known as common but differentiated responsibilities,

[8] See United Nations, *Treaty Series*, vol. 1771, No. 30822.

[9] FCCC/CP/1997/7/Add.1, decision 1/CP.3, annex.

[10] Barbara Adams and Gretchen Luchsinger, *Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs*, New York and Geneva, United Nations Non-Governmental Liaison Service, 2009, p. 5.

captures equity in relation to burden-sharing between countries and people, as far as mitigation and adaptation are concerned.

12. Making adaptation a priority does not mean that indigenous peoples would not continue to undertake mitigation measures. That is an inherent part of their self-assigned roles as custodians and stewards of their lands. The sustainable use and management of indigenous peoples' ecosystems and the natural resources found therein, as well as their low-carbon or carbon-neutral lifestyles and livelihoods have contributed to the mitigation of climate change effects. Additionally, their successful struggles against the extraction of fossil fuels from their territories and against deforestation have kept carbon under the ground and in trees and soil. These are the most direct contributions of indigenous peoples to climate change mitigation, which unfortunately, are not accounted for and remain uncompensated.

13. Indigenous peoples' natural resource management practices are place-based, time-tested, climate-resilient, collectively managed, cost-effective and sustainable. The replication and upscaling of these practices, the recognition of the indigenous knowledge systems behind these practices and the provision of adequate support and incentives for these practices to continue should be ensured and integrated as part of global and national mitigation measures.

14. The imperative of enhancing the resilience of biocultural systems is generally understood and practised by indigenous peoples not only as a part of their adaptation but also as a measure to strengthen mitigation of climate change effects. Indigenous peoples view the world as an interconnected whole, with any intervention in one area having a direct relationship with another area. However, adaptation cannot be sustained if mitigation is not effected; the capacity to mitigate is related to how people are adapting and making their ecosystems more resilient. The protection of indigenous peoples' right to their lands, territories and resources and their right to self-determination cannot be treated separately from their capacities in pursuing effective adaptation and mitigation measures. Thus, previous reports[3,4] emphasized the need for adapting the human-rights-based and ecosystem-based approaches to adaptation and mitigation measures. Such approaches will be discussed in later sections of the present report.

III. Analysis of some documents on adaptation and mitigation issued before and during the fifteenth meeting of the Conference of Parties

15. The United Nations Framework Convention on Climate Change has organized expert workshops on the sharing of information on existing adaptation practices, experiences, needs, gaps, opportunities and constraints, as well as on the contribution of traditional knowledge to adaptation and local coping strategies for adaptation. One such workshop on adaptation planning and practices, held in Rome, from 10 to 12 September 2007, identified gaps and needs in stakeholder engagement and planning instruments, underscoring that, "The planning process needs to take into account social, economic or cultural consequences of adaptation measures. For example, relocation of communities threatens their cultural identity, as is the case for Pacific islanders or Inuit living in the Canadian Arctic".[11] The workshop

[11] FCCC/SBSTA/2007/15.

acknowledged that traditional knowledge and practices which are the result of long-term adaptation to existing climatic conditions could contribute to developing adaptation planning and practices.

16. During intersessional meetings in 2009 and at the fifteenth meeting of the Conference of Parties in Copenhagen, the draft decision[12] negotiated by the Adaptation Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol, at its tenth session, in Copenhagen, from 7 to 15 December 2009, states the following concerning the Parties:

> *Affirms* that enhanced action on adaptation should be undertaken in accordance with the Convention and the provisions thereunder; follow a country-driven, gender-sensitive, participatory approach to adaptation; be based on and guided by the best available science, traditional knowledge, as appropriate, and good governance and mutual accountability, with the aim of integrating adaptation actions into relevant social, economic and environmental policies.

17. That draft decision invites all Parties to undertake planning, prioritizing and implementing adaptation actions, including specific projects and programmes, and actions identified in national adaptation programmes of action of least developed countries, national communications, technology needs assessments and other relevant national documents (para. 4 (a)). The Parties are also invited to undertake impact, vulnerability and adaptation assessments, including assessments of financial needs as well as economic, social and environmental costs and benefits of adaptation options (para. 4 (b)). It further invites the Parties to develop means to incentivize the implementation of adaptation actions and other ways to enable climate-resilient development and reduce the vulnerability of all Parties (para. 4 (d)). The draft decision invites all Parties to build resilience of socio-economic and ecological systems, including through economic diversification and sustainable management of natural resources (para. 4 (e)).

18. While there is no specific reference to indigenous peoples in the draft decision on enhanced action on adaptation, the issues are still relevant to them. Adaptation processes are basically local, as the direct impacts of climate change are felt locally. Responses should be tailored to meet the specific needs of the communities affected and the specific characteristics of their ecosystems. Assessments of key vulnerabilities of key regions and communities and the differentiated consequences of climate change for different social groups within communities are components of adaptation. It is crucial therefore that indigenous peoples take part in the development, implementation and monitoring of national adaptation programmes of action, national communications and technology needs assessments. Adaptation measures which are undertaken autonomously by indigenous peoples should be integrated into national adaptation plans and supported by Governments and the donor community in the form of finance, technology, policy reforms and development. Enhancing their capacities and local empowerment, as well as building on traditional knowledge and expertise are essential elements of long-term adaptation strategies.

19. Indigenous peoples in various parts of the world are using their traditional knowledge to undertake their own impact assessments of their vulnerability to

[12] See FCCC/AWGLCA/2009/17, annex I.B.

climate change and identifying a range of responses to adaptation. Such assessments help indigenous peoples to design appropriate adaptation and response strategies and influence policies at the national and global levels. These initiatives are undertaken because of the concern that the existing frameworks used for assessing impacts of climate change and mitigation measures and the development of adaptation strategies do not recognize or integrate indigenous worldviews, epistemologies, knowledge and practices. Indigenous peoples have used their observations of the natural environment in such ways that the behaviour of plants and animals, as well as clouds, mist and wind is used to make weather forecasts, determine the best time to plant crops and prepare for impending disasters. More conscious efforts should be made to combine indigenous traditional knowledge with modern science for the purposes of adaptation and mitigation.

20. One of the weaknesses in climate change reports is the inadequate analysis of the social impacts of climate change, which includes the negative impacts of some adaptation and mitigation measures on indigenous peoples. In the United Nations Framework Convention on Climate Change the Parties are looking at the potential economic and social consequences of climate responses. Very little is said about the consequences of some renewable energy projects, such as mega-hydroelectric dams, on indigenous peoples, for instance. In order to address this gap, the Permanent Forum chose as the special theme for its 2007 session: "Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges".

21. The text on adaptation recognizes the need to build the resilience of socio-economic and ecological systems through economic diversification and sustainable management of natural resources. Indigenous peoples, since time immemorial, have undertaken conscious efforts to protect and sustainably manage and use biologically diverse ecosystems, which are the source not only of their livelihoods and survival but also the basis of their diverse cultures and knowledge systems. The continuation and further development of diverse land, water and natural resource management systems and knowledge systems, cultures and governance systems of indigenous peoples are equally important in reducing their vulnerability and in supporting their climate-resilient and self-determined development processes.

IV. Agreements reached on reducing emissions from deforestation and forest degradation (REDD-plus)[13] and the ways forward

22. Another draft decision which was consolidated in Copenhagen is referred to as REDD-plus.[14] The Ad Hoc Working Group on Long-Term Cooperative Action under the Convention is the main body under which REDD-plus was discussed and negotiated. The findings of the IPCC Fourth Assessment Report,[7] that deforestation is the source of 17 to 20 per cent of the total carbon emissions and that there is more

[13] In the present report, "REDD-plus" refers to "policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries".

[14] See FCCC/AWGLCA/2009/17, annex I.G.

carbon in the world's forests than in the atmosphere form the basis of REDD-plus. In addition to the IPCC report, another publication[15] on the economics of climate change had earlier highlighted that reducing emissions caused by deforestation and forest degradation was a cost-effective approach to mitigation.

23. It is important to note that the REDD-plus draft decision, negotiated before and during the fifteenth meeting of the Conference of Parties, is the only such material to contain references to the rights of indigenous peoples and the United Nations Declaration on the Rights of Indigenous Peoples, as well as the need to ensure indigenous peoples' full and effective engagement and to recognize the importance of their traditional knowledge. Methodological guidance for drafting REDD-plus was rendered by the Subsidiary Body for Scientific and Technological Advice of the United Nations Framework Convention on Climate Change[16] in order to ensure the full and effective engagement of indigenous peoples and local communities. Owing to the sustained efforts of indigenous peoples since the United Nations Climate Change Conference held in Bali, Indonesia, in 2007, there have been several achievements: indigenous peoples have become actively engaged in the REDD-plus process and links have been established with Governments and NGOs that are keen to have REDD-plus included in the agreements reached at United Nations climate change conferences.

24. These developments are groundbreaking. Never before in the history of the United Nations Framework Convention on Climate Change process has any document referred to human rights much less indigenous peoples' rights. Whenever indigenous peoples raised the issue of rights in the past, they were told that the United Nations Framework Convention on Climate Change is concerned with reducing GHG emissions — not about rights. During the meeting of the previously mentioned Subsidiary Body at the time of the United Nations Climate Change Conference in Poznań, Poland, in 2008, when indigenous peoples and supportive Governments were asserting that the United Nations Declaration on the Rights of Indigenous Peoples should be included in the decision, the Parties said that such policy issues should be addressed by the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention. However, because REDD-plus is about tropical forests and, as the last remaining forests are found mostly in indigenous peoples' territories, the assertion of these facts left the Parties with no choice but to acknowledge indigenous peoples' rights.

25. It took tremendous effort from indigenous peoples, under the umbrella of the International Indigenous Peoples Forum on Climate Change and with the help of supportive Parties and NGOs, to get their point across. The paragraphs which are no longer in brackets (except for a few words) and which are operational in nature are as follows:[14]

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[15] Nicholas Stern, *Stern Review on the Economics of Climate Change*, Cambridge, United Kingdom, Cambridge University Press, 2006.

[16] This body advises the United Nations Climate Change Conference about technological, scientific and methodological matters. In relation to REDD-plus, it gives guidance on issues such as how to measure, report and verify emission reductions; and how to define accurate baselines; as well as on the scope of REDD-plus.

2. *Further affirms* that when undertaking activities referred to in paragraph 3 below, the following safeguards should be [promoted] [and] [supported]:

...

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) Full and effective participation of relevant stakeholders, including in particular indigenous peoples and local communities in actions referred to in paragraphs 3 and 5 below;

(e) Actions that are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 3 below are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.

26. An additional paragraph identifies further approaches to be taken:

6. *Requests* developing country Parties when developing and implementing their national strategy or action plan, [or subnational strategies] to address, inter alia, drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 above, ensuring the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities.[14]

27. In Copenhagen, the Subsidiary Body completed the programme of work that it had started in Poznań concerning the agenda item entitled "Reducing emissions from developing countries: approaches to stimulate action". The result was a draft decision on methodological guidance for activities relating to REDD-plus.[17] The portions of the text which are relevant for indigenous peoples are as follows:

Recognizing the need for full and effective engagement of indigenous peoples and local communities in, and the potential contribution of their knowledge to, monitoring and reporting of activities relating to decision 1/CP.13, paragraph 1 (b) (iii).

...

1. *Requests* developing country Parties ...

(a) To identify drivers of deforestation and forest degradation resulting in emissions and also the means to address these;

...

3. *Encourages*, as appropriate, the development of guidance for effective engagement of indigenous peoples and local communities in monitoring and reporting.

[17] FCCC/SBSTA/2009/L.19/Add.1.

28. That draft decision is an improvement on what had emerged in Poznań because it uses the term "indigenous peoples" instead of "indigenous people". However, it still falls short of what indigenous peoples had proposed: (a) mentioning the relevance of the United Nations Declaration on the Rights of Indigenous Peoples in developing methodologies on REDD-plus; and (b) the full and effective engagement of indigenous peoples should not be limited only to monitoring and reporting but should also include engagement in the design of REDD-plus, as well as its implementation. Another proposal calls for the holding of a workshop for experts to discuss the guidance model for effectively engaging indigenous peoples and local communities. There should be a concerted effort on the part of indigenous peoples and their supporters to push for organizing such a workshop as this would furnish an opportunity to elaborate further what effective engagement means and how it should be carried out.

29. Many indigenous peoples who have been influencing the REDD-plus negotiations believe that, while there are many risks and perils in REDD if it is implemented incorrectly, it is still important to be engaged in the process because this is an area where the direct link between rights and climate change solutions is very obvious. The main slogan of the indigenous peoples' caucus was "No Rights no REDD". Unless rights and equity are integrated in the design, implementation and monitoring of REDD-plus it is bound to fail.

30. There are many serious concerns about REDD because of the way in which it was originally conceived and the way it is being shaped into part of the carbon trading mechanism, which Annex I parties could use to meet some of their obligations under the Kyoto Protocol. One concern is that, instead of cutting back their GHG emissions on the home front, the Annex I parties would just buy cheap forest carbon credits from tropical developing countries which are implementing REDD-plus. This would reduce the pressure on Annex I parties to cut their own emissions. Therefore, the Annex I parties could continue with business-as-usual which, in the end, would not result in any substantial cuts in emissions. If forest carbon becomes part of the carbon market, speculative or hedging activities ("subprime carbon") would be facilitated. The experience with the global financial and economic crisis, which was spurred by financial liberalization and deregulation in the financial sector, demonstrates what could happen to the global carbon market. This is why there is a strong preference that forests should not be used as offsets.

31. There is a long history of violation of the tenurial rights of indigenous peoples to their forests and resources and of the mismanagement of forests by developing countries. The forest laws and forestry master plans of most nation States were likewise designed to give full control and ownership of the forests to the State, totally ignoring the fact that many of these forests are collectively owned and managed by indigenous peoples. Many forest-protection efforts failed because forest-dwelling and -dependent indigenous peoples were excluded and their tenurial rights to their forests and forest resources were not respected. The International Institute for Environment and Development completed a study on land and resource tenure issues that concludes:

> Resource tenure — the systems of rights, rules, institutions and processes regulating resource access and use — is key to shaping the distribution of risks, costs and benefits. Secure tenure gives local people more leverage in relations with government and the private sector. Insecure tenure, on the other

> hand, makes them vulnerable to dispossession — which could be a major concern if REDD increases land values and outside interest.[18]

32. Good forest governance is another key element for the success of REDD-plus. It is known that, in most tropical forest countries, corruption is most intense in the forestry sector. Part of good governance involves recognition of the rights of indigenous peoples to their forests and the resources therein. In assessing State ownership of forests, a recent study by the Rights and Resources Initiative stated:

> Governments still declare ownership of about 65 per cent of the world's forests, while only about 9 per cent are legally owned or designated for use by communities and indigenous peoples. And national and local leaders may become the target of efforts to use bribery to obtain forest-related agreements that fail to consider the rights of those most affected.[19]

33. Addressing the drivers of deforestation, such as destructive logging, infrastructure development and the conversion of forests into agribusinesses or extractive industries (oil, gas, minerals), has tremendous implications in terms of actions and policy reform. The people behind these drivers are usually the most economically and politically powerful players within and outside a country. Thus, it was significant that the REDD-plus documents contained text that stressed the need to identify drivers of deforestation and forest degradation, as well as ways to address these issues. One weakness is that the call for such action is limited to developing countries only; developed countries have not been asked to do so. Indigenous peoples who were part of the Government negotiating panels and supportive Governments insisted that the wording should refer to "developing and developed countries", but their intervention was not included in the drafts. As mentioned previously, it is known that international trade in timber, whether illegal or legal, mining operations by foreign corporations, among other such activities, are also drivers of deforestation. Thus, it makes sense to look at the drivers not only within developing countries but also beyond.

34. Indigenous peoples who are engaged in the REDD-plus process at the global, national and local levels are not oblivious to the actual and potential perils and realities. It is precisely these sad experiences of State and market mishandling of tropical forests and discriminating against indigenous peoples that compelled them to assert that they should have a major say in how REDD-plus should be designed, implemented and monitored. Their resolve to ensure that safeguard mechanisms and respect for the rights of indigenous peoples are made an integral part of the REDD-plus agreement has met with success, so far, judging from the previously cited draft text. Many indigenous peoples just refuse to be victims any more. They have their own agency and in the face of all the problems they face, their options range from non-participation to active participation or engagement. In the case of REDD, some are actively engaged in helping to shape its design and others are involved mainly in critiquing the agreement. Both approaches are useful and demonstrate the operationalization of the right to self-determination.

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[18] See Lorenzo Cotula and James Mayer, *Tenure in REDD: Start-point or Afterthought?* London, International Institute for Environment and Development, 2009.

[19] Liz Alden Wily, David Rhodes, Madhu Sarin and Phil Shearman, *The End of the Hinterland: Forests, Conflict and Climate Change*, Washington, D.C., Rights and Resources Initiative, 2010.

35. Yet, there is a long way to go in relation to how these aspects will be translated into action in the global and national arenas. The issues that remain unresolved by the fifteenth meeting of the Conference of Parties relate to the scale of implementation (acceptance of subnational implementation and monitoring), whether REDD-plus is part of the nationally appropriate mitigation actions or the low GHG emissions strategies; whether it is part of the measuring, reporting or verifying measures for the support furnished by developed countries, or the commitment to those measures for REDD-plus activities and results-based actions in a phased approach; and whether the sources of finance will be from public funds, or from financial markets and private investments, or a combination of both.

36. The Copenhagen Accord,[20] the highly critiqued outcome of the Copenhagen Summit, contains language which recognizes the crucial role of REDD and the need to enhance the removal of GHGs from the atmosphere by forests and to incentivize such actions through mobilization of funds from developed countries. The Accord also mentions including REDD-plus in the list of activities which need to benefit from scaled-up, additional, predictable and adequate funding.

37. While REDD-plus is recognized in the Copenhagen Accord, which links it with the issue of financing, it is clear that the agreement can work only within the context of broad, legally binding, ambitious overall global targets for emission reductions, primarily by Annex I parties and high-level voluntary commitments by developing countries that are now major emitters of GHGs. This does not mean, however, that indigenous peoples are abandoning the gains achieved so far. They should still build upon these gains in future negotiations. Specific recommendations that would enable them to do so are contained in the present report's concluding section.

V. Copenhagen Accord

38. There are very serious concerns about how the Copenhagen Accord came about, what it contains and what is missing from it. However, the real outcome of the Copenhagen Summit are the draft texts prepared by various working groups. After the United Nations Climate Change Conference in Bali, Indonesia, in 2007 and the adoption of the Bali Action Plan, the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention started working through a multilateral process leading up to the time of the Copenhagen Summit. There was considerable progress in the previously mentioned Long-Term Cooperative Action Working Group but not in the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol. The two-track approach defined under the Bali Action Plan involves the holding of parallel negotiations in the two ad hoc working groups. After many hours of meetings, the two working groups produced drafts that had been prepared during their negotiations.

39. One of the major disagreements between Annex I and non-Annex I parties involves the legal form of the Copenhagen outcomes. Since the time of the Bali Conference, the Annex I parties wanted to eliminate the Kyoto Protocol and replace it with a new, single legally binding agreement which would include the United States and major emerging economies, namely Brazil, China, India and South

[20] The Copenhagen Accord is available online from www.unfccc.int.

Africa. This is the reason why there has been little progress in the Working Group on the Kyoto Protocol, as most of the developed country parties to the Kyoto Protocol were not presenting individual targets for emission reduction for the second commitment period. In fact, their actions and statements indicated that they wanted the Kyoto Protocol to end and be replaced with a new legally binding protocol. Drafts of a Copenhagen protocol composed by NGOs and submitted by some Parties were distributed in meetings held in Bonn, Germany, in mid-2009. The Group of 77 and China, on the other hand, wanted two legal outcomes: an amended Kyoto Protocol, which would contain commitments of Parties for a second commitment period and a package of United Nations Framework Convention on Climate Change Conference of Parties decisions from the negotiations of the Long-Term Cooperative Action Working Group, which would include comparable, legally binding emission cuts from the United States. Additionally, these decisions would include agreements on a long-term shared vision, which would set the aggregate global emission reductions targets; mitigation measures, which would include REDD-plus; and adaptation, finance, technology transfer and capacity-building measures.

40. The draft accord was not accepted by consensus at the fifteenth meeting of the Conference of Parties and the Copenhagen Summit only "took note" of it but did not "adopt" it. The process of developing the Copenhagen Accord and the failed attempt to get it adopted has weakened the multilateral system considerably. Below are some implications of the Copenhagen Accord culled mainly from analyses of NGOs, such as South Centre,[21] Third World Network, Friends of the Earth and Greenpeace, among others, and the views of the special rapporteurs.

(a) **Weakens multilateralism and the global climate policy framework.** The Accord lays the foundation for weakening the Kyoto Protocol as a multilateral treaty instrument for developed countries' binding emission reduction commitments and the United Nations Framework Convention on Climate Change, as the primary multilateral treaty for global action on climate change. Those who pushed the draft accord say that it was not efficient for obtaining a global agreement negotiated by 194 parties; an alternative would be to bring together a few Parties and get them to agree first before getting that agreement adopted by the wider group. However, this approach would totally undermine multilateralism, which the United Nations stands for, and it would also weaken the global climate policy framework, which is owned by both developed and developing countries.

(b) **Bottom-up approach trumps the top-down approach.** The Kyoto Protocol sets aggregate emission targets which Annex I parties should collectively achieve; this is referred to as the "top-down approach". Arrangements are made which determine the share of each party, together with a compliance system. The Copenhagen Accord would replace this arrangement with a "bottom-up" approach and a voluntary pledge-based regime. Each country could submit its own targets, without subjecting them to agreement by all Parties to the Convention. This approach would be the road towards letting Annex I parties evade their legal obligations under the Kyoto Protocol and allow them to set lower aggregate and individual targets, which later could be seen in their submission of targets at the end

[21] See Martin Khor, "After Copenhagen, the way forward", *South Bulletin*, South Centre, Geneva; available online at www.southcentre.org/index.php?option=com_content&task=view&id=1233&Itemid=287.

of January 2010 in completing the appendix 1 table of the Accord. The purpose of any global regime, whether an environmental legal regime or a human rights regime, is to establish global or international standards to which members should adhere.

(c) **Ignored the science; did not establish an aggregate reduction target for global emissions; and did not include a road map to keep global warming below 2 degrees Celsius.** The Accord does not elaborate on how the 2 degrees Celsius global temperature target could be met and it does not mention the target of an atmospheric carbon dioxide concentration of 350 ppm. It also does not establish an aggregate midterm target (by 2020) for developed countries to cut their GHG emissions by 80 per cent, which is the baseline and reference point for their individual mitigation targets, and is consistent with the scientific position (of 40 per cent reduction from 1990 levels by 2020). Further, it failed to establish a long-term goal, such as the 80 per cent reduction by 2050.

(d) **Negated and redefined the principle of common but differentiated responsibilities and side-stepped the issue of climate equity and justice.** The United Nations Framework Convention on Climate Change and the Kyoto Protocol established that the mitigation actions of developing countries are contingent on the financing and technologies provided by the Annex I parties. The Accord ignored this aspect and established a new set of mitigation and measuring, reporting and verifying obligations for developing countries more stringent than the existing national communications for Annex I parties. Furthermore, it did not contain the comparability obligation negotiated under paragraph 1 (b) (i) of the Bali Action Plan, which would compel Annex I parties that are not Parties to the Kyoto Protocol to commit themselves to individual mitigation targets comparable (in figures, legal nature, time frames) to the commitments of the Parties to the Kyoto Protocol.

(e) **Lack of clarity on the sources and nature of financing and its management.** There is mention in the Accord of finances to support developing countries, but there is a lack of clarity on where the financing would come from, whether in the form of grants or loans, how the decisions on allotments would be made, who would decide etc. Paragraph 8 of the Accord mentions a collective commitment by developed countries to providing new and additional resources approaching $30 billion for the period 2010-2012 for the purposes of adaptation and mitigation. It includes a reference to forestry and investments through international institutions, which could suggest that the source would be the World Bank. Other funds under the United Nations Framework Convention on Climate Change, such as the Least Developed Country Fund and the Adaptation Fund, were not mentioned.

(f) For mitigation alone, developed countries would mobilize $100 billion a year by 2020 for developing countries. However, the phrase "commit to mobilize" is quite different from "commit to provide". The sources for this amount of money to be mobilized range from public and private sources to bilateral, multilateral and alternative sources of funding (which are not defined). Thus, the amount would come not just from public funds plus there is no mention of whether the financing would be in the form of grants or loans, or both.

(g) The establishment of a "Copenhagen green climate fund" was mentioned as a mechanism through which a significant portion of new multilateral funding for adaptation would flow. This fund would be established as an operating entity of the financial mechanism of the Convention (para. 10). Yet, it is not clear what shape this

would take or whether the fund would be managed by the United Nations Framework Convention on Climate Change or outside entities.

41. On 31 January 2010, on the basis of invitations by the Secretariat of the United Nations Framework Convention on Climate Change, some parties submitted their national reduction targets. As of 2 February, 97 of them submitted their targets or the actions they would take. Of that number, 39 were developed countries. According to an analysis by the World Resources Institute, only 3 (Belarus, Croatia and the Russian Federation) out of the 39 developed countries improved their targets in the Accord. Canada lowered its target and other developed countries maintained the same levels as they had announced during the 2009 negotiations. In its submission to the Secretariat, Canada lowered its target reduction to 17 per cent over that of the 2005 level. The Institute commented that the Canadian target was now actually 3 per cent below the 1990 level and if land use, land-use change and forestry were included, the figure would be 19 per cent above the 1990 level. The United States has a similar reduction target of 17 per cent of 2005 levels. It stated that its target is conditional on the assumption that other Annex I parties, as well as more advanced non-Annex I parties, had until 31 January to associate themselves with the Accord and submit mitigation actions for compilation. The Institute noted that the United States target was equivalent to 3 per cent of the 1990 levels.

42. Analysis undertaken by the Sustainability Institute of the Sloan School of Management of the Massachusetts Institute of Technology indicates that the pledges submitted under the Copenhagen Accord will lead to a global temperature rise of 3.9 degrees Celsius, which is far beyond the target of the 2-degree limit set by the Accord. Scientists consider that likelihood would be disastrous for the environment and human life. The Sustainability Institute's study reiterated that to keep within the goal of 2 degrees Celsius, global emissions must peak by 2020 and fall to at least 50 per cent below 1990 levels by 2050.

VI. Conclusion and recommendations

43. For indigenous peoples, the end of the Copenhagen Summit was a major disappointment because the Parties were unable to reach the serious agreements needed to solve an impending human-made global catastrophe. Climate change is a phenomenon which illustrates very lucidly what is wrong with the way the world has been functioning economically, politically and socially. Therefore, it does not suffice to nibble at the edges of the problem. There must be more decisive moves to make greater commitments in terms of reducing emissions, furnishing financial support and transferring mitigation and adaptation technologies. These steps are needed to radically change the paradigm of development and economic growth, putting these factors on track towards a system which is climate-sensitive, respectful of human rights and social justice, and mindful of ecological limits.

44. Negotiations after the Copenhagen Summit should still pursue the two-track approach (under the previously mentioned ad hoc working groups) and the legal outcomes, that is, an amended Kyoto Protocol, which would contain the targets for the second commitment period, and a package of the sixteenth meeting of the Conference of Parties to the United Nations Framework Convention on Climate Change decisions, which would include the comparable commitments of the United States, as well as actions from the high-emitting developing countries, which would

be measured, reported and verified. In considering the scientific analysis showing that the commitments pledged under the Copenhagen Accord would still lead to a temperature rise of 3.9 degrees Celsius, there is an urgent need to pressure Annex I parties and major emitting developing countries to scale up their emission reduction commitments and not make them contingent on what others are willing to commit.

45. Such a package would also contain commensurate and adequate commitments from Annex I parties on finance (in the form of grants and public funds) and on technology transfer to developing countries. The levels of commitment under the Copenhagen Accord are not adequate. The funding mechanism should be housed primarily within the United Nations Framework Convention on Climate Change and not in multilateral development banks.

46. The President of Bolivia, Juan Evo Morales Ayma, in his speech at the Copenhagen Summit and in a meeting with the indigenous peoples' caucus, stated that climate change was a result of capitalism. Climate change is indeed a result of an economic system which is based on the values of consumerism, individualism, domination of nature and "Mother Earth" and the belief that money is wealth. This is a system that has no consideration for ecological limits, is based mainly on fossil fuels for energy, allows for unregulated plunder of natural resources in indigenous peoples' territories, even without their consent, and concentrates great wealth in the hands of a few corporations and individuals, thus fostering gross inequality and destruction of mutual trust, community solidarity and caring. There is a need to restructure national economic, political and social systems to be ecologically sustainable, climate-sensitive, just, equitable and culturally diverse. The Permanent Forum at its ninth session has a good opportunity to elaborate further on the development, with culture and identity, of indigenous peoples.

47. The incessant drive for economic growth should be replaced with a system that seeks growth in the quality of life (living well, life in harmony, *buen vivir*), in human solidarity (mutual trust and caring, connectedness with family, clan, neighbours and even those in distant lands, as well as with future generations yet to come) and in strong connections with nature (seeing humanity as part of nature not as dominators of nature). Indigenous peoples' values of reciprocity, collectivity, solidarity, reverence for nature and the Earth, among others, should underpin such a world. Measures of a good quality of life need to go beyond GNP towards a human development index plus environmental and natural resource indicators. National accounting systems should be expanded to measure not only economic growth but also human well-being and ecological sustainability.

48. Indigenous peoples could further contribute to lowering GHG emissions by continuing their ecosystem-based natural resource management practices and customary use of resources and low-consumption lifestyles and traditional livelihoods. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples will definitely reinforce the capacity of indigenous peoples to mitigate and adapt to climate change. Therefore, the special rapporteurs recommend that national policy frameworks and legislation that protects the rights of indigenous peoples should be enacted and implemented. Financial and technological support should also be provided directly to indigenous peoples so they could pursue their local adaptation and mitigation measures.

49. As far as REDD-plus is concerned, it is important for indigenous peoples to ensure that the points on safeguards remain in the final text. A major challenge is

how can they sustain their effective participation not only at the global level but also at the national and local levels where REDD-plus will be implemented.

50. The factors and activities that would determine the success of local adaptation and mitigation activities, including REDD-plus, which should be pursued at the national and local levels, include the following:

(a) Sustained awareness-raising and capacity-building activities among indigenous peoples, as well as Governments and intergovernmental bodies, so that they would be more responsive to indigenous peoples' demands, need to be undertaken on a broader scale and in a sustained manner. Finances will be needed to accomplish these goals;

(b) Respect for the rights of indigenous peoples, which means the rights contained in the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments and agreements, entails the popularization and implementation of the Declaration by States, the United Nations system, intergovernmental bodies and the private sector. It is important to establish direct links between implementation of the United Nations Declaration on the Rights of Indigenous Peoples and climate change activities;

(c) Policy reforms that would ensure the tenurial rights of indigenous peoples to their forests, carbon and other resources need to be enshrined in law. A review of existing laws, policies, programmes and projects should be completed so that changes could be recommended which need to be put into place. Respect for customary laws on forests and traditional natural resource management knowledge and practices should also be included;

(d) Indigenous peoples should be better equipped to defend their rights. Thus, it is crucial that they learn of these existing tools and instruments, which they could use when they have complaints and grievances on climate change activities that are not done properly. This includes the use of the complaint mechanisms of United Nations Treaty Bodies, other intergovernmental bodies such as the Organization of American States, the African Commission on Human and Peoples' Rights and grievance bodies of multilateral development banks, such as the World Bank and Asian Development Bank, in particular its inspection panels and the ombudsman of the International Finance Corporation, among others;

(e) The full involvement of indigenous peoples and other forest-dwelling people is needed in the design, implementation, monitoring, measuring, reporting, verification, and evaluation processes of REDD-plus. Transparency and coordination among the different players should be ensured;

(f) The design, establishment and implementation of transparent and equitable benefit-sharing distribution systems at the national and subnational levels are needed to ensure that fair benefits go directly to the indigenous peoples and local communities that are the main custodians of the forests;

(g) REDD-plus architecture should include ways to ensure good forest governance, prevention of the displacement of emissions (leakage) and the establishment of robust mechanisms for setting baselines, reference levels, including emission levels, measuring, monitoring, reporting and verifying. That architecture should also allow for subnational implementation subject to strict monitoring, verification and national accounting. The right to self-determination of indigenous

peoples means they can implement REDD-plus at the subnational level as their territories are generally subnational.

51. The decision of the Conference of the Parties in Copenhagen stated that the documents of the two previously mentioned ad hoc working groups would be used as the basis for continuing negotiations in 2010. The mandate of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention was extended by another year until the 2010 Climate Change Conference in Mexico. Indigenous peoples should continue their active participation so that they could influence the forthcoming negotiations to ensure that the final texts to be agreed upon are enriched further in order to support their local adaptation and mitigation measures. They should still endeavour to get their demands for full and effective participation and for respect of their rights contained in the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments integrated within other documents, not just in REDD-plus. Furthermore, incentivization for the integration and use of their traditional knowledge and traditional technologies in adaptation and mitigation measures should be ensured so that the contributions of indigenous peoples in solving the problems posed by climate change will be reinforced.

52. Finally, the United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the special rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples should be involved in monitoring, reporting and helping to develop policy guidelines and action programmes of the United Nations Framework Convention on Climate Change and the Parties at the global and national levels.